A

PENTADBIR TANAH DAERAH TIMUR LAUT, PULAU PINANG v. YEOH OON THEAM

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
VERNON ONG LAM KIAT JCA
B ABDUL RAHMAN SEBLI JCA
[CIVIL APPEAL NO: P-01-306-08-2014]
14 DECEMBER 2016

C ***LAND LAW:*** *Rent – Arrears – Recovery – Land Administrator – Issuance of notice of demand for quit rent, arrears of quit rent and penalties under s. 97 of National Land Code – Whether 'action' within meaning of s. 2(1) of Limitation Act 1953 – Whether applicable to non-judicial acts – Whether notice of demand subjected to limitation period – Whether notice enforceable – Limitation Act 1953, s. 6(1)(d) & (4)*

D ***LIMITATION:*** *Land – Arrears and penalties – Demand – Land Administrator – Issuance of notice of demand for quit rent, arrears of quit rent and penalties under s. 97 of National Land Code – Whether 'action' within meaning of s. 2(1) of Limitation Act 1953 – Whether applicable to non-judicial acts – Whether notice of demand subjected to limitation period – Whether notice enforceable – Limitation* E *Act 1953, s. 6(1)(d) & (4)*

By way of a notice of demand ('the notice') under s. 97 of the National Land Code ('the NLC'), the appellant demanded from the respondent a sum of RM343,832.93 being quit rent, arrears of quit rent and penalties. The appellant threatened to commence forfeiture proceedings against the F respondent in the event of default. The respondent paid the sum under protest and challenged the demand *via* an appeal at the High Court under s. 418 of the NLC. According to the respondent, the demand was an 'action' within the meaning of s. 2(1) of the Limitation Act 1953 ('the Act') and since it was made outside the limitation periods prescribed by s. 6(1)(d) and (4) of the G Act, the notice was void and unenforceable. The Judicial Commissioner ('the JC') accepted the respondent's argument and allowed the appeal. The appellant was ordered to refund the principal sum of RM280,749.13 to the respondent after taking into account the sum of RM63,083.80 which the respondent admitted was payable to the appellant. Hence, the present appeal. H The appellant submitted that its act of issuing the notice was not subject to any limitation period as it was not an 'action' for the purpose of the Act. It was further submitted that the words 'actions' and 'action' in s. 6(1)(d) and (4) only refer to proceedings in a court of law and not to non-judicial acts such as the issuance of the notice by the appellant. In other words, the I context of the appellant's claim against the respondent for the arrears in quit rent and penalties, 'action' referred to the filing of a civil suit in the court and not the issuance of a notice by the Land Administrator. On the other

hand, the respondent argued that 'action' under the Act need not be proceedings in a court of law but may include any statutorily prescribed procedure associated with the recovery of money due under any written law. The primary issue that arose for the court's determination was whether the use of the word 'includes' in s. 2(1) of the Act has so enlarged the meaning of the word 'action' that it must include within its scope the appellant's act of issuing the notice under the NLC.

Held (allowing appeal)
Per Abdul Rahman Sebli JCA delivering the judgment of the court:

(1) Section 2(1) of the Act begins with the caveat 'In this Act, unless the context otherwise requires …'. The context does not require the meaning of the word 'action' in s. 2(1) to be enlarged so as to include within its scope such statutory acts as the issuance of a notice by the appellant. The interpretation is repugnant to s. 6(1)(d) and (4) of the Act and will stretch the meaning of the word 'action' beyond what s. 2(1) requires in its application to s. 6(1)(d) and (4). It will lead to an absurd result where all similar administrative acts by the relevant authorities having similar statutory powers as those exercisable by the appellant will be subject to limitation of action under the Act although the exercise of such powers does not involve any proceeding in a court of law. (paras 34-35)

(2) The appellant's claim for the arrears in quit rent and penalties was not time-barred. The appellant's act of issuing the notice was not subject to any limitation period as it was not an 'action' for the purpose of the Act. The demand made by the appellant, issued as it was pursuant to s. 97 of the NLC and not through the court process, was clearly not an 'action' within the meaning of s. 6(1)(d) and (4) read with s. 2(1) of the Act. It was the respondent's act of filing the appeal under s. 418 of the NLC that constituted an 'action' within the meaning of the Act. However, an appeal under s. 418 of the NLC is unrelated to the exercise by the appellant of his statutory power under the NLC. (paras 41-43)

Bahasa Malaysia *Headnotes*

Melalui notis tuntutan ('notis') bawah s. 97 Kanun Tanah Negara ('KTN'), perayu menuntut daripada responden RM343,832.93 iaitu bagi cukai pintu, tunggakan cukai pintu dan denda. Perayu mengugut untuk memulakan prosiding pelucuthakan terhadap responden jika dia gagal membayarnya. Responden membayar jumlah tersebut dengan bantahan dan mencabar tuntutan perayu melalui rayuan di Mahkamah Tinggi bawah s. 418 KTN. Menurut responden, tuntutan tersebut adalah 'tindakan' dalam maksud s. 2(1) Akta Had Masa 1953 ('Akta') dan kerana dibuat di luar had masa yang ditetapkan oleh s. 6(1)(d) dan (4) Akta, notis tersebut terbatal dan tidak boleh berkuat kuasa. Pesuruhjaya Kehakiman ('PK') menerima hujahan responden dan membenarkan rayuan. Perayu diperintah membayar wang pokok

berjumlah RM280,749.13 kepada responden selepas mengambil kira jumlah RM63,083.80 yang responden akui perlu dibayar kepada perayu. Maka timbul rayuan ini. Perayu menghujahkan bahawa tindakannya mengeluarkan notis tersebut tidak tertakluk pada apa-apa had masa kerana bukan 'tindakan' bagi maksud Akta. Dihujahkan selanjutnya bahawa perkataan 'tindakan' dan 'tindakan' dalam s. 6(1)(d) dan (4) hanya merujuk prosiding dalam mahkamah undang-undang dan bukan tindakan bukan kehakiman seperti pengeluaran notis oleh perayu. Dalam kata lain, konteks tuntutan perayu terhadap responden bagi tunggakan cukai pintu dan denda, 'tindakan' merujuk pada pemfailan guaman sivil dan bukan pengeluaran notis oleh Pentadbir Tanah. Sebaliknya, responden mendalihkan 'tindakan' bawah Akta tidak semestinya prosiding dalam mahkamah undang-undang tetapi boleh juga termasuk apa-apa tatacara yang diperuntukkan oleh statut berkaitan tuntutan semula wang yang terhutang bawah undang-undang bertulis. Isu utama yang berbangkit bagi pertimbangan mahkamah adalah sama ada perkataan 'termasuklah' dalam s. 2(1) Akta meluaskan maksud 'tindakan' hingga termasuk, dalam skopnya, tindakan perayu mengeluarkan notis bawah KTN.

Diputuskan (membenarkan rayuan)

Oleh Abdul Rahman Sebli HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 2(1) Akta bermula dengan kaveat 'Dalam Akta ini, melainkan jika konteksnya mengkehendaki …'. Konteks ini tidak memerlukan maksud perkataan 'action' dalam s. 2(1) diluaskan hingga termasuk dalam skopnya, tindakan statutori seperti pengeluaran notis oleh perayu. Tafsiran ini bertentangan dengan s. 6(1)(d) dan (4) dan memutarbelitkan makna perkataan 'tindakan' melampaui yang dikehendaki s. 2(1) dalam pemakaiannya pada s. 6(1)(d) dan (4). Ini akan menghasilkan keputusan yang tidak masuk akal iaitu semua tindakan pentadbiran yang serupa oleh pihak berkuasa relevan yang mempunyai kuasa statutori yang serupa dengan kuasa yang dijalankan oleh perayu akan tertakluk pada tindakan sekatan bawah Akta walaupun penjalanan kuasa sedemikian tidak melibatkan apa-apa prosiding dalam mahkamah undang-undang.

(2) Tuntutan perayu bagi tunggakan cukai pintu dan denda tidak disekat had masa. Tindakan perayu mengeluarkan notis tidak tertakluk pada apa-apa tempoh sekatan kerana ini bukan 'tindakan' bagi maksud Akta. Tuntutan perayu, yang dibuat bawah s. 97 KTN dan bukan proses mahkamah, jelas bukan 'tindakan' dalam maksud s. 6(1)(d) dan (4) dibaca bersama-sama dengan s. 2(1) Akta. Tindakan responden memfailkan rayuan bawah s. 418 KTN yang membentuk 'tindakan' dalam maksud Akta. Walau bagaimanapun, rayuan bawah s. 418 KTN tiada kaitan dengan penjalanan kuasa statutorinya bawah KTN.

Case(s) referred to:
AmBank (M) Bhd v. Abdul Aziz Hassan & Ors [2010] 7 CLJ 663 CA ***(refd)***
China v. Harrow Urban District Council [1953] 2 All ER 1296 ***(refd)***
Dilworth & Others v. Commissioner of Stamps [1899] AC 99 ***(refd)***
Lee Ah Chor v. Southern Bank Bhd [1991] 1 CLJ 667; [1991] 1 CLJ (Rep) 239 SC ***(refd)***
Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 3 CLJ 310 FC ***(refd)***
Rengasamy Pillai v. Comptroller of Income Tax [1970] 1 LNS 139 FC ***(refd)***
Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd [2002] 3 CLJ 624 CA ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 3
Limitation Act 1953, ss. 2(1), 6(1)(d), (4)
National Land Code, ss. 97, 100, 418

Limitation Act 1939 [UK], ss. 2(1)(d), 31(1)

For the appellant - Aliza Sulaiman; State Legal Advisor, Penang
For the respondent - Mahinder Singh Dulku, Ong Eng Khuan & Jegathesan Karupiah; M/s Thayalan & Assocs

[Editor's note: For the High Court judgment, please see Yeoh Oon Theam v. Pentadbir Tanah Daerah Timur Laut, Pulau Pinang [2014] 1 LNS 1858 (overruled).]

Reported by Najib Tamby

JUDGMENT

Abdul Rahman Sebli JCA:

The Demand

[1] By notice of demand dated 22 April 1997, the appellant demanded from the respondent a sum of RM343,832.93 being quit rent, arrears of quit rent and penalties due in respect of Lot 3475, Section 5, Georgetown, Penang within 21 days from the date of the notice, and in default thereof the appellant threatened to commence forfeiture proceedings against the respondent which would have resulted in the land being forfeited to the State Authority under s. 100 of the National Land Code ("the Land Code"). The notice of demand was issued pursuant to s. 97 of the Land Code. The respondent paid the sum of RM343,832.93 under protest.

The Challenge

[2] The respondent then challenged the demand by way of an appeal to the High Court under s. 418 of the Land Code and succeeded. The appellant was ordered to refund the principal sum of RM280,749.13 to the respondent with interest and costs after taking into account the sum of RM63,083.80 which the respondent admitted was payable to the appellant.

[3] There was no cross-appeal by the respondent against the order in respect of the RM63,083.80. It was therefore not open to the respondent to ask, as he did in this appeal, for an order that this amount be refunded to him on the ground that he had mistakenly admitted the sum to be payable to the appellant.

[4] The reason why the learned Judicial Commissioner ("the learned JC") allowed the respondent's appeal was because he found that the appellant's demand was time-barred by virtue of s. 6(1)(d) and 6(4) of the Limitation Act 1953 ("the Limitation Act"). The learned JC accepted the respondent's argument that the demand was an "action" within the meaning of s. 2(1) of the Limitation Act and since it was made outside the limitation periods prescribed by s. 6(1)(d) and 6(4), the notice of demand was void and unenforceable.

[5] Having considered the arguments both written and oral from both sides, we unanimously allowed the appellant's appeal and set aside the decision of the learned JC. These are our grounds for allowing the appeal.

The Issues

[6] There were only two issues raised by the respondent in the court below and they were:

(a) Whether the demand by the appellant was an "action" for the purpose of the Limitation Act 1953 ("the Limitation Act"); and

(b) Whether the Limitation Act applied and if so whether the appellant's claim for the sum was time-barred.

[7] Before us, however, two new issues were raised by the respondent, which the learned State Legal Advisor objected to on the ground that the appeal should be confined to issues raised in the High Court, citing *Lee Ah Chor v. Southern Bank Bhd* [1991] 1 CLJ 667; [1991] 1 CLJ (Rep) 239; [1991] 1 MLJ 428; *Rengasamy Pillai v. Comptroller of Income Tax* [1970] 1 LNS 139; [1970] 1 MLJ 233; *AmBank (M) Bhd v. Abdul Aziz Hassan & Ors* [2010] 7 CLJ 663; [2010] 3 MLJ 784; *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 3 CLJ 310; [2009] 5 MLJ 770.

[8] We agreed with the learned State Legal Advisor and disregarded the new issues raised by the respondent. In our view, it would be unfair and prejudicial to the appellant to allow the new issues to be ventilated and decided upon when the appellant had no chance of contradicting them by way of affidavit evidence, which was how the evidence was adduced at the High Court.

[9] The two issues for our determination were intertwined and were therefore considered together. The relevant limitation periods for the purpose of this appeal were the periods prescribed by s. 6(1)(d) and 6(4) of the Limitation Act as rightly determined by the learned JC. The two provisions are couched in the following language:

Section 6(1)(d)

6(1) Save as hereinafter provided the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say:

(d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.

Section 6(4)

6(4) An action to recover any penalty or forfeiture or sum by way of penalty or forfeiture recoverable by virtue of any written law shall not be brought after the expiration of one year from the date on which the cause of action accrued:

Provided that for the purpose of this subsection the expression "penalty" shall not include a fine to which a person is liable on conviction for a criminal offence.

[10] The provisions are to be read together with s. 2(1) which defines the word "action" as follows:

2(1) In this Act, unless the context otherwise requires:

"action" includes a suit or any other proceeding in a court of law;

[11] So under s. 6(1)(d), an action to recover any sum recoverable under any written law must be brought within six years from the date on which the cause of action accrued whereas for an action to recover a penalty or of a sum by way of a penalty or forfeiture by virtue of any written law, s. 6(4) provides that it must be brought within one year from the date on which the cause of action accrued. Obviously, both periods had lapsed long before the notice of demand was issued by the appellant, 25 years to be exact.

The Arguments

[12] The appellant's argument was that their act of issuing the notice of demand was not subject to any limitation period as it was not an "action" for the purpose of the Limitation Act. It was submitted that the words "actions" and "action" in s. 6(1)(d) and 6(4) only refer to proceedings in a court of law and not to non-judicial acts such as the issuance of the notice of demand by the appellant.

[13] In other words, in the context of the appellant's claim against the respondent for the arrears in quit rent and penalties, "action" refers to the filing of a civil suit in court and not the issuance of a notice of demand by the Land Administrator.

[14] The respondent contended otherwise. It was submitted that "action" under the Limitation Act need not be a proceeding in a court of law but may include any statutorily prescribed procedure associated with the recovery of money due under any written law. Reliance was placed on the decision of the English Court of Appeal in *China v. Harrow Urban District Council* [1953] 2 All ER 1296 ("*Harrow Urban District Council*") in support of the argument. It was a decision on s. 2(1)(d) of the English Limitation Act 1939 ("the English Act") which is in *pari materia* with s. 6(1)(d) of the Limitation Act.

[15] Since *Harrow Urban District Council* was the peg on which the respondent hung his argument to, we shall deal with the case in more detail. The facts, as recounted by Lord Goddard CJ, are these. In April 1940, the ratepayer was in arrears in respect of rates for previous years to the amount of £26 15s and 4d and he became liable for a proportion of a further half year's rate amounting to £4 8s and 9d in respect of his occupancy of the rated hereditament between 1 April and 5 July 1940, when he ceased to be the occupier.

[16] No action was taken by the rating authority against the ratepayer at the time, as he was then on war service, or for some time after that, as they did not know where he was living. On 11 February 1953, having ascertained his whereabouts, the rating authority made a further demand for payment, from which it was assumed that previous demands had been made, as in the ordinary course of things they would have been.

[17] On 18 March the same year, the rating authority preferred a complaint against the ratepayer with a view to obtaining a distress warrant, which was granted. It appeared that the rating authority was seeking, and had obtained, a warrant for arrears all accruing more than six years previously, and some, at least, 14 or perhaps 15 years previously.

[18] The key question for the court's determination was whether the limitation period under the English Act applied to proceedings for the recovery of assessment rates by the rating authority. To determine this question, it was necessary for the court to decide if the rating authority's application for the distress warrant was a "proceeding in a court of law" within the definition of "action" in s. 31(1) of the English Act, which is in *pari materia* with s. 2(1) of the Limitation Act.

[19] By a unanimous decision, the court answered the question in the positive, which meant that the rating authority's action by way of distress proceedings came within s. 2(1)(d) of the English Act. The effect of the ruling was that in order for the demand by the rating authority to be valid, it must be made within the limitation period of six years as prescribed by s. 2(1)(d). The court rejected the rating authority's contention that when the judges issued the warrant of distress, they were acting "ministerially" and not judicially.

[20] The *ratio decidendi* of the case is encapsulated in the following passages in the respective judgments of Lord Goddard CJ, Sellers J and Havers J:

Lord Goddard CJ at p. 1298:

> It is unnecessary to burden this judgment by referring to the numerous decisions as to the meaning of "action", as, for purposes of the Act, the word is defined by s. 31(1) as including "any proceeding in a court of law, including an ecclesiastical court", unless the context otherwise requires. *It is not, in my opinion, open to doubt that an application for a distress warrant is a proceeding in a court of law. The dicta of Cockburn, CJ, in Sweetman v. Guest*

(9) and R. v. Price (6), that justices are, in such a matter, acting ministerially, and not judicially, has not been followed. In Potts v. Hickman (1) Viscount Simon, LC, said ([1940] 4 All ER 495) that "justices, when granting a distress warrant for rates, are proceeding judicially." Lord Wright said (*ibid*., 506) that an order for a warrant of distress was made in a judicial proceeding, and (*ibid*., 508) that the *dictum* of Cockburn CJ, in *R. v. Price* (8), could not be supported as a statement of the general law. (emphasis added)

[21] Sellers J at p. 1300:

But while, in the case of rates, it cannot be said that there is a cause of action (*Liverpool Corpn. v. Hope* (3)), there does arise a cause of action in a court of law. *If the appropriate proceedings are taken to enforce a debt for rates, the hearing is a judicial proceeding, and not (as the rating authority, apparently, submitted before the justices) a ministerial matter: see Potts v. Hickman (1).* In such a judicial proceeding, matters have to be proved by the applicant and issues may be raised by a person so summoned before the court. *The elements for constituting a proceeding in a court of law are present.* (emphasis added)

[22] Havers J at p. 1302:

The form of the distress warrant, which was set out in the schedule to the Distress for Rates Act, 1849, indicates the various matters which have to be proved by the rating authority and found by the justices before they can issue a distress warrant. There are also various matters which it is open to the person summoned to raise by way of objection. At one time the view was held that in such proceedings the justices were acting ministerially and not judicially: see *Sweetman v. Gues*t (9) and *R. v. Price* (8). *However since Potts v. Hickman (1), it cannot, in my opinion, now be successfully contended that an order for a warrant of distress is not made in a judicial proceeding or that justices are not acting judicially in making an order. In my opinion, an application for a distress warrant is a proceeding in a court of law.* (emphasis added)

[23] It is clear that *Harrow Urban District Council* was decided in the context of a distress proceeding, which the court held to be a "proceeding in a court of law". Plainly the issue is not germane to the issue before us. The case before us concerned a notice of demand that was issued by the Land Administrator and not by the court, unlike the distress warrant in *Harrow Urban District Council*, which was issued by the judges.

[24] More importantly, the notice of demand was issued directly to the respondent and did not involve the court process at all. *Harrow Urban District Council* is therefore irrelevant as the facts are poles apart from the facts of the case before us. Consequently, the decision is of no assistance to the respondent. Discounting *Harrow Urban District Council*, there appears to be no authority directly on point, and neither counsel for the respondent nor the learned State Legal Advisor had referred us to any other.

The Word "Includes" In s. 2(1)

[25] Given the view that we took on *Harrow Urban District Council*, the next question we had to consider was whether the respondent was right in his argument, which the learned JC accepted, that the words "actions" and "action" in ss. 6(1)(d) and 6(4) respectively are not restricted to a "proceeding in a court of law" but include such acts as the issuing of the notice of demand by the appellant. Unfortunately, the point was not discussed in *Harrow Urban District Council.*

[26] Learned counsel drew our attention to the distinction between the definition of the word "action" in s. 2(1) of the Limitation Act and the definition given to the same word by s. 3 of the Courts of Judicature Act 1964 ("the CJA"). It was pointed out that while s. 2(1) of the Limitation Act uses the word "includes", s. 3 of the CJA employs the word "means" to define "action".

[27] The sheet anchor of the respondent's argument was that since the meaning of the words "actions" and "action" in s. 6(1)(d) and 6(4) are "enlarged" by the word "includes" in s. 2(1), it follows that the act of the appellant in issuing the notice of demand, being an "action" by reason of the "enlargement", was subject to the limitation periods prescribed by s. 6(1)(d) and 6(4).

[28] What that means in practical terms is that, in order for the notice of demand to be valid, it must be issued within the prescribed limitation periods of six years and one year respectively under s. 6(1)(d) and 6(4), otherwise the "action" to recover the arrears of quit rent and penalties would be time-barred and therefore void, with the consequence that the amount claimed was not recoverable.

[29] If the respondent was right in his contention, the appellant would of course be caught by limitation as the appellant's demand for payment of the arrears in quit rent and penalties was made way outside the limitation periods prescribed by s. 6(1)(d) and 6(4) of the Limitation Act.

[30] Learned counsel for the respondent referred us to UN Mitra's *Law of Limitation & Prescription*, 13th edn (Lexis Nexis) where the learned authors in dealing with the word "include" wrote:

> The word 'include' is generally used to enlarge the meaning of words or phrases occurring in the body of the statute and when it is so used those words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the definition clause declares that they should include. The word 'include' shows that the definition is not exhaustive. "Includes" is a word of extension and is generally used to enlarge the meaning of a term; when a definition is intended to be exclusive it would seem the form

> of words is "means and includes". By 'including' certain things in the definition, others are thereby not excluded. When a definition exhaustive of the sense of a word is intended, the expression "means" or "means and includes" is employed.

[31] We were also referred to *Dilworth & Others v. Commissioner of Stamps* [1899] AC 99 where Lord Watson delivering the judgment of the Judicial Committee of the Privy Council made the following observations with regard to the word "include" in a statute:

> The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

[32] In *Tenaga Nasional Bhd v. Tekali Prospecting Sdn Bhd* [2002] 3 CLJ 624; [2002] 2 MLJ 707 Gopal Sri Ram JCA (as he then was) explained the meaning of the word "includes" in the following terms:

> Particular emphasis is to be placed upon the word "includes" in this definition. On settled principles of statutory interpretation, it is clear that when an Act of Parliament employs the expression 'includes' to define some other word or expression, the intention is to leave the meaning of the expression defined open ended. By contrast, when the word 'means' is employed to define something, there is a rebuttable presumption of statutory interpretation that Parliament intends to restrict the meaning of the expression defined.

[33] On the factual matrix of the case before us, the question is whether the use of the word "includes" in s. 2(1) of the Limitation Act has so enlarged the meaning of the word "action" that it must include within its scope the appellant's act of issuing the notice of demand under the Land Code.

[34] We have to say, with all due respect to the learned JC, that the proposition is untenable as the interpretation is repugnant to s. 6(1)(d) and 6(4). It is of crucial importance to appreciate that s. 2(1) begins with the caveat "in this Act, unless the context otherwise requires". The context in our view does not require the meaning of the word "action" in s. 2(1) to be enlarged so as to include within its scope such statutory acts as the issuance of a notice of demand by the appellant.

[35] To our minds, that will be stretching the meaning of the word "action" beyond what s. 2(1) requires in its application to s. 6(1)(d) and 6(4). It will lead to an absurd result whereby all similar administrative acts by the relevant authorities having similar statutory powers as those exercisable by the appellant will be subject to limitation of action under the Limitation Act although the exercise of such powers does not involve any "proceeding in a court of law".

[36] In saying this, we are of course mindful of the fact that some statutes do have inbuilt limitation periods for the exercise of certain administrative powers, but that is not the case with the exercise by the appellant of his power under the Land Code to issue a notice of demand.

[37] Further, the interpretation will in some ways be in conflict with *Harrow Urban District Council* which the respondent himself relied on in support of his case. It will be recalled that the English Court of Appeal's decision in that case was that the rating authority's "action" to apply for the warrant of distress, being a "proceeding in a court of law", was therefore subject to the limitation period prescribed by s. 2(1)(d) read with s. 31(1) of the English Act.

[38] If the court in that case had decided that the distress proceedings initiated by the rating authority was not a "proceeding in a court of law", in all probability, the case would have been decided differently because then the issuance of the distress warrant by the judges would have been considered to be a ministerial and not a judicial function and therefore not subject to the limitation period of six years prescribed by s. 2(1)(d) of the English Act.

[39] The court decided the way it did because the distress proceedings initiated by the rating authority was a "proceeding in a court of law" and not a proceeding by way of a "ministerial" action (in our context an administrative action).

[40] If the reasoning in that case were to be applied in the reverse to the facts of the case before us, the result would be that the issuance of the notice of demand, not being a "proceeding in a court of law", would not be subject to the Limitation Act as it was purely an exercise of administrative power and not a judicial function.

[41] The truth is, there is nothing similar in the "action" of the rating authority in *Harrow Urban District Council* to apply for the distress warrant with the "action" of the appellant in issuing the notice of demand. The demand made by the appellant, issued as it was pursuant to s. 97 of the Land Code and not through the court process, was clearly not an "action" within the meaning of s. 6(1)(d) and 6(4) read with s. 2(1) of the Limitation Act.

[42] If at all, it was the respondent's act of filing the appeal under s. 418 of the Land Code that constituted an "action" within the meaning of the Limitation Act. But an appeal under s. 418 of the Land Code is unrelated to the exercise by the appellant of his statutory power under the Land Code. In any event, an appeal under s. 418 is initiated by the party aggrieved by the decision of the Land Administrator and not the other way round.

Conclusion

[43] It was for all these reasons that we found merit in the learned State Legal Advisor's argument that the appellant's act of issuing the notice of demand was not subject to any limitation period as it was not an "action" for the purpose of the Limitation Act. It follows that the appellant's claim for the arrears in quit rent and penalties was not time-barred.